

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 1836 of 1989****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH**

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Whether Reporters of Local Papers
1 may be allowed to see the
judgment ?

2 To be referred to the Reporter or
not ?

3 Whether their Lordships wish to see
the fair copy of the judgment ?

Whether this case involves a
substantial question of law as to
4 the interpretation of the
constitution of India, 1950 or any
order made thereunder ?

5 Whether it is to be circulated to
the civil judge ?

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VINODBHAI S NAYAK - Petitioner(s)

Versus

GITABEN S DESAI & 1 - Respondent(s)

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Appearance :

MS SUDHA R GANGWAR for Petitioner(s) : 1, None for
Petitioner(s) : None for Petitioner No(s).: for
Petitioner(s) : 2 - 8.
NOTICE SERVED for Respondent(s) : 1,
None for Respondent(s) : 2 - 4.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 28/09/2005

ORAL JUDGMENT

1. In this petition under Articles 226 and 227 of the Constitution of India, the petitioners have challenged the legality and validity of the order passed by the Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat dtd.23/1/1989 in Revision Application No. SRD-764 of 1984 in not only allowing the said revision application, cancelling / quashing and setting aside the Development Permission granted by the District Development Officer dtd.22/1/1981 but further directing to initiate the proceedings for the breach of the order dtd.4/8/1976 granting Non-Agricultural Use Permission.
2. The dispute is with regard to the original land bearing Survey No.869, 877/1, 872, 873, 874, 875, 878/1 and 890 of village Killa Pardi, which were originally owned by one Amthalal Dayalji Patel and Ranchhodbhai Ukabhai Patel. The original land owners applied for permission under sec.65 of the Bombay Land Revenue Code for using the aforesaid in question for Non-agricultural purposes. The District

Development Officer, Valsad granted permission to use the land in question for non-agricultural purposes vide order dtd.4/8/1976 and it was permitted to sub-plot the aforesaid land in question into 72 plots as per the sanctioned Lay-out Plan and the some portion was to be kept open as common plot. The dispute in the present petition is with regard to the common plot. The petitioner Nos.1 and 2, thereafter applied on 21/7/1980 to the District Development Officer for permission to sub-plot the portion of common plot, which according to them was in excess of the common plot, was to be left open under the Circular of the Government. The District Development Officer, Valsad vide order dtd.22/1/1981 granted permission to develop the portion of the common plot by sub-plotting the same and by making plot Nos.74, 75 and 76, admeasuring 1560.07 sq.mtrs. It is the case of the petitioners that the petitioner Nos.1 and 2 sold the sub-plot No.74 to the petitioner Nos.3 to 8 and sub-plot Nos.75 and 76 came to be retained by them. It appears that the said permission granted by the District Development Officer, Valsad vide order dtd.22/1/1981 came to be challenged by the respondent No.1 who was one of the plot holder being Plot No.72 which was as per the original permission / order dtd.4/8/1976, before the Special Secretary (Appeals), Revenue Department, State of

Gujarat and the Addl.Secretary (Appeals), Revenue Dept., State of Gujarat, vide its judgment and order dtd.23/1/1989 not only allowed the revision application, quashing and setting aside the order passed by the District Development Officer dtd.22/1/1981 granting development permission for common plot by sub-plotting sub-plot No.74 to 76, but also directed to initiate the proceedings for breach of condition of order dtd.4/8/1976 granting Non-agricultural Use Permission under sec.65 of the Bombay Land Revenue Code. Being aggrieved by and dissatisfied with the order passed by the Addl.Chief Secretary (Appeals), Revenue Department, State of Gujarat dtd.23/1/1989 in Revision Application No.SRD-764 of 1984, the petitioners have preferred the present petition under Articles 226 and 227 of the Constitution of India.

3. It is the contention on behalf of the present petitioner that the Addl.Chief Secretary ought not to have exercised the powers in the Revision Application challenging the order passed by the District Development Officer dtd.22/1/1981, as the said revision application was filed after unreasonable period of 2 years. It is also further submitted on behalf of the petitioners that in a revision application

challenging the order passed by the District Development Officer dtd.22/1/1981, the Addl.Chief Secretary ought not to have passed an order to initiate the proceedings for breach of conditions of the order dtd.4/8/1976 granting Non-agricultural Use Permission, as the such directions is beyond the scope of revisional jurisdiction.

4. It is also required to be noted that the Non-agricultural Use Permission came to be granted by the District Development Officer vide order dtd.4/8/1976 and Lay-out Plan was sanctioned and as per the same, it was permitted to have 72 plots only and certain portion of land were required to be kept open as common plot. Therefore, the subsequent order dtd.22/1/1991 passed by the District Development Officer, Valsad granting Non-agricultural Use Permission to have sub-plot in the common plot was absolutely illegal and therefore, it is rightly quashed and set aside by the Secretary (Appeals), when it is found by the Addl. Secretary (Appeals) that the said order dtd.22/1/1981 allowing the petitioner to put up the construction in the common plot is absolutely illegal and contrary to the original original sanctioned plan, and therefore, there is no question of exercise of powers belatedly and the order passed by the Secretary (Appeals) is not required to be

quashed and set aside. Therefore, there is no illegality committed by the Addl.Chief Secretary (Appeals), Revenue Dept., State of Gujarat in quashing and setting the order passed by the District Development Officer, dtd.22/1/1981 granting development permission. However, the petitioners are right in making the grievance that in revision application challenging the order passed by the District Development Officer, Valsad dtd.22/1/1981, the Addl.Chief Secretary was not required to consider the alleged breach of condition of order dtd.4/8/1976 granting development permission and therefore, the the directions issued by the Addl.Chief Secretary to initiate the proceedings for breach of condition of Non-agricultural Use Permission under sec.65 of the Bombay Land Revenue Code, is beyond the scope of revisional jurisdiction and the same is required to be quashed and set aside.

5. For the reasons stated hereinabove, the petition succeeds partly. The impugned order passed by the Addl.Chief Secretary (Appeals), Revenue department, State of Gujarat dtd.23/1/1989 in Revision Application No.764 of 1984 is quashed and set aside only to the extent directing to initiate proceedings for breach of condition of Non-

agricultural Use Permission granted vide order dtd.4/8/1976. Rest of the order passed by the Addl.Chief Secretary is confirmed. Rule is made absolute the aforesaid extent only. However, there will be no order as to costs. Ad-interim relief granted earlier, if any, stands vacated forthwith.

(M.R. SHAH,J.)

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